

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No. 020431.0776

In re Application of:

SANJAY KUMAR, ET AL.

Serial No. **09/972,127**

Filed: 4 OCTOBER 2001

For: COLLABORATIVE FULFILLMENT IN A DISTRIBUTED SUPPLY CHAIN ENVIRONMENT

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Examiner:

GERALD J. O'CONNOR

Art Unit: **3627**

Confirmation No.: **3685**

AMENDED APPEAL BRIEF

MAIL STOP: APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir/Madam:

This Amended Appeal Brief is filed in response to a Notification of Non-Compliant Appeal Brief dated 21 March 2007, which provides for a response period ending 21 April 2007.

This is an appeal from the final rejection in the Office Action dated 5 June 2006, which rejected Claims 1-13 and 27-33 in the present Application. A Notice of Panel Decision from Pre-Appeal Brief Review was mailed on 25 October 2006, resulting in an Appeal Brief due date of 25 November 2006, which is a Saturday, extending the due date to 27 November 2006, the following Monday.

This Amended Appeal Brief is in response to a Notification of Non-Compliant Appeal Brief dated 21 March 2007. This Amended Appeal Brief is filed subsequent to the filing of an Appeal Brief, filed 27 November 2006, which included a deposit account authorization for the \$500.00 fee for filing of the Appeal Brief. Thus, no fees are deemed to presently be necessary; however, the undersigned hereby authorizes the Director to charge any fees that may be required, or credit any overpayments, to **Deposit Account No. 500777**.

If an extension of time is required to enable this document to be timely filed and there is no separate Petition for Extension of Time filed herewith, this document is to be construed as also constituting a Petition for Extension of Time under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed. Any fee required for such Petition for Extension of Time and any other fee required by this document and not submitted herewith should be charged to **Deposit Account No. 500777**. Any refund should be credited to **Deposit Account No. 500777**.

Real Party in Interest (37 C.F.R. § 41.37(c)(1)(i)):

The real party in interest in the present Application is i2 Technologies US, Inc., as indicated by:

an Assignment recorded on 4 October 2001, corrected on 15 July 2002, from the inventor to i2 Technologies US, Inc., in the Assignment Records of the United States Patent and Trademark Office (the “PTO”) at Reel 012240, Frame 0227, corrected at Reel 013083, Frame 0978.

Related Appeals and Interferences (37 C.F.R. § 41.37(c)(1)(ii)):

There are no related appeals or declared interferences that will directly affect or be directly affected by a decision by the Board of Patent Appeals and Interferences (the “Board”) in the present appeal to the knowledge of the undersigned.

Status of Claims (37 C.F.R. § 41.37(c)(1)(iii)):

Claims 1-13 and 27-33 are pending in the present Application. The status of the pending claims is as follows:

Rejected:	1-13 and 27-33
Allowed or confirmed:	None
Withdrawn:	None
Objected to:	None
Canceled without <i>prejudice</i> :	14-26

Appellants hereby appeal the Examiner's final rejection of Claims 1-13 and 27-33, which presently stand rejected over the cited references. Appealed Claims 1-13 and 27-33 are set forth in a Claims Appendix, attached hereto, pursuant to 37 C.F.R. § 41.37(c)(1)(viii).

Status of Amendments (37 C.F.R. § 41.37(c)(1)(iv)):

Appellants filed no amendments subsequent to the Final Office Action.

Summary of Claimed Subject Matter (37 C.F.R. § 41.37(c)(1)(v)):

A. Independent Claim 1

Independent Claim 1 is directed towards a fulfillment system associated with a distributed supply chain. The fulfillment system comprises a database (Specification, at least at, page 62, line 8; Figure 6, database 658), operable to store at least one customer-specified rule identifying a sourcing constraint (Specification, at least at, page 12, line 28; page 13, lines 6 – 22; and page 25, line 9 – page 26, line 22) associated with a customer and at least one contract value associated with a current status of a contract involving the customer (Specification, at least at, page 13, lines 6 – 22; page 16, lines 5-10 and page 16, line 32 – page 17, line 1). The fulfillment system also comprises one or more processors (Specification, at least at, page 62, lines 7-29; Figure 6, processor 650) collectively operable to receive an available-to-promise (ATP) request comprising a plurality of request line-items each corresponding to a desired product (Specification, at least at page 8, lines 3-8; page 19, lines 27-31; and page 65, lines 14-26), generate one or more component ATP requests using at least one rule in the database and based on the request line-items (Specification, at least at page 8, lines 3-5; page 13, lines 3-7; page 16, lines 1-10; page 19, lines 27-31; page 31, lines 16-20; and page 65, lines 14-26), communicate the component ATP requests to at least one supplier associated with the desired product (Specification, at least at page 8, lines 3-8; page 19, lines 27-31; page 20, lines 27-31; page 31, lines 16-20; and page 65, lines 14-26), the supplier determined according to at least one customer-specified rule identifying the sourcing constraint (Specification at least at page 28, lines 2-9; page 30, lines 8-12; page 31, lines 16-20; and page 65, lines 14-26); receive a plurality of component quotations from at least one supplier (Specification, at least at, page 6, lines 23-27; and page 65, lines 14-26), each component quotation corresponding to a component ATP request and comprising product availability information for one or more corresponding desired products, and generate a quotation for communication using the product availability information and the contract value in the database (Specification, at least at, page 8, lines 3-29; page 14, line 31 –

page 15, line 4; page 19, lines 11-13; page 19 lines 22-25; page 21, lines 1-4; page 37, lines 17-19; and page 65, lines 14-26).

B. Independent Claim 27

Independent Claim 27 is directed towards software for fulfillment in a distributed supply chain environment. The software is embodied in at least one computer-readable medium. When executed by one or more processors, the software is operable to receive an available-to-promise (ATP) request comprising a plurality of request line-items each corresponding to a desired product (Specification, at least at page 8, lines 3-8; page 19, lines 27-31; and page 65, lines 14-26), generate one or more component ATP requests using at least one rule in the database and based on the request line-items (Specification, at least at page 8, lines 3-5; page 13, lines 3-7; page 16, lines 1-10; page 19, lines 27-31; page 31, lines 16-20; and page 65, lines 14-26), at least one of the rules identifying a source constraint associated with a customer (Specification, at least at, page 12, line 28; page 13, lines 6 – 22; page 25, line 9 – page 26, line 22; and page 65, lines 14-26), communicate the component ATP requests to at least one supplier associated with the desired product (Specification, at least at page 8, lines 3-8; page 19, lines 27-31; page 20, lines 27-31; page 31, lines 16-20; and page 65, lines 14-26), the supplier determined according to at least one customer-specified rule identifying the sourcing constraint (Specification at least at page 28, lines 2-9; page 30, lines 8-12; page 31, lines 16-20; and page 65, lines 14-26); receive a plurality of component quotations from at least one supplier (Specification, at least at, page 6, lines 23-27; and page 65, lines 14-26), each component quotation corresponding to a component ATP request and comprising product availability information for one or more corresponding desired products, and generate a quotation for communication using the product availability information and the contract value in the database (Specification, at least at, page 8, lines 3-29; page 14, line 31 – page 15, line 4; page 19, lines 11-13; page 19 lines 22-25; page 21, lines 1-4; page 37, lines 17-19; and page 65, lines 14-26).

C. Independent Claim 28

Independent Claim 1 is directed towards a fulfillment system associated with a distributed supply chain. The fulfillment system comprises a means for storing (Specification, at least at, page 62, line 8; Figure 6, database 658) at least one customer-specified rule identifying a sourcing constraint (Specification, at least at, page 12, line 28; page 13, lines 6 – 22; and page 25, line 9 – page 26, line 22) associated with a customer and at least one contract value associated with a current status of a contract involving the customer (Specification, at least at, page 13, lines 6 – 22; page 16, lines 5-10 and page 16, line 32 – page 17, line 1). The fulfillment system also comprises a means for receiving (Specification, at least at, page 62, lines 7-29; Figure 6, processor 650) an available-to-promise (ATP) request comprising a plurality of request line-items each corresponding to a desired product (Specification, at least at page 8, lines 3-8; page 19, lines 27-31; and page 65, lines 14-26), a means for generating (Specification, at least at, page 62, lines 7-29; Figure 6, processor 650) one or more component ATP requests using at least one rule in the database and based on the request line-items (Specification, at least at page 8, lines 3-5; page 13, lines 3-7; page 16, lines 1-10; page 19, lines 27-31; page 31, lines 16-20; and page 65, lines 14-26), a means for communicating (Specification, at least at, page 62, lines 7-29; Figure 6, processor 650) the component ATP requests to at least one supplier associated with the desired product (Specification, at least at page 8, lines 3-8; page 19, lines 27-31; page 20, lines 27-31; page 31, lines 16-20; and page 65, lines 14-26), the supplier determined according to at least one customer-specified rule identifying the sourcing constraint (Specification at least at page 28, lines 2-9; page 30, lines 8-12; page 31, lines 16-20; and page 65, lines 14-26); means for receiving (Specification, at least at, page 62, lines 7-29; Figure 6, processor 650) a plurality of component quotations from at least one supplier (Specification, at least at, page 6, lines 23-27; and page 65, lines 14-26), each component quotation corresponding to a component ATP request and comprising product availability information for one or more corresponding desired products, and a means for generating (Specification, at least at, page 62, lines 7-29; ; and page 65, lines 14-26; Figure 6, processor 650) a quotation for communication using the product availability information and the contract value in the database (Specification, at

least at, page 8, lines 3-29; page 14, line 31 – page 15, line 4; page 19, lines 11-13; page 19 lines 22-25; page 21, lines 1-4; page 37, lines 17-19; and page 65, lines 14-26).

D. Independent Claim 29

Independent Claim 29 is directed towards a fulfillment system associated with a distributed supply chain. The fulfillment system comprises a database (Specification, at least at, page 62, line 8; Figure 6, database 658), operable to store at least one customer-specified first rule identifying a sourcing constraint (Specification, at least at, page 12, line 28; page 13, lines 6 – 22; and page 25, line 9 – page 26, line 22) associated with a customer, at least one of the first rules identifying one or more preferred suppliers associated with the customer (Specification, at least at, page 10, lines 16-19; page 12, lines 5-9; page 28, lines 2-4; and page 65, lines 28-31) and at least one second rule identifying a sourcing constraint associated with a supplier (Specification, at least at, page 12, lines 15-27; and page 29, lines 25-27). The fulfillment system also comprises one or more processors (Specification, at least at, page 62, lines 7-29; Figure 6, processor 650) collectively operable to generate a contract value associated with a current status of a contract involving the customer (Specification, at least at, page 13, lines 6 – 22; page 16, lines 5-10 and page 16, line 32 – page 17, line 1). The processors are also operable to receive an available-to-promise (ATP) request comprising a plurality of request line-items each corresponding to a desired product (Specification, at least at page 8, lines 3-8; page 19, lines 27-31; and page 65, lines 14-26), select one or more of the rules based on contents of the ATP request, generate one or more component ATP requests using at least one of the selected customer-specified rules and based on the request line-items (Specification, at least at page 8, lines 3-5; page 13, lines 3-7; page 16, lines 1-10; page 19, lines 27-31; page 31, lines 16-20; and page 65, lines 14-26). The processors are operable to communicate the component ATP requests to at least one supplier associated with the desired product (Specification, at least at page 8, lines 3-8; page 16, lines 1-10; page 19, lines 27-31; page 20, lines 27-31; page 31, lines 16-20; and page 65, lines 14-26), the supplier determined according to at least one rule identifying one of the sourcing constraint (Specification at least at page 28, lines 2-9; page 30, lines 8-12; page 31, lines

16-20; and page 65, lines 14-26), receive a plurality of component quotations from at least one supplier (Specification, at least at, page 6, lines 23-27; page 37, lines 17-19; and page 65, lines 14-26), each component quotation corresponding to a component ATP request and comprising product availability information for one or more corresponding desired products (Specification, at least at, page 37, lines 17-19; and page 65, lines 14-26), and generate a first sourcing plan using the product availability information and the contract value, the first sourcing plan identifying one or more suppliers and a quantity of the desired product reserved from each identified supplier (Specification, at least at, page 8, lines 3-29; page 14, line 31 – page 15, line 4; page 16, lines 1-10; page 19, lines 11-13; page 19 lines 22-25; page 21, lines 1-4, page 37, lines 17-19; and page 65, lines 14-26), determine if the first sourcing plan satisfies the corresponding rules in the database, and iteratively generate at least one additional sourcing plan if the first sourcing plan fails to satisfy the corresponding rules in the database (Specification, at least at, page 12, lines 3-11; page 45, lines 4-22; and page 65, line 27 – page 66, line 5).

Grounds of Rejection to be Reviewed on Appeal (37 C.F.R. § 41.37(c)(1)(vi)):

Claims 1-13 and 27-33 stand rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 5,758,327 to Gardner et al. (“*Gardner*”). Thus, the issue is whether *Gardner* discloses every limitation of each rejected claim in the same relationship to one another as set forth in each claim.

Argument (37 C.F.R. § 41.37(c)(1)(vii)):

A. Rejection of Claims 1-13 and 27-33

Claims 1-13 and 27-33 are currently pending in the application.

Claims 14-26 have been previously canceled without *prejudice*.

Claims 1-13 and 27-33 stand rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 5,758,327 to Gardner *et al.* (“Gardner”).

I. Rejection Under 35 U.S.C. § 102(b):

Claims 1-13 and 27-33 stand rejected under 35 U.S.C. § 102(b) over *Gardner*.

Appellants respectfully submit that *Gardner* fails to disclose each and every limitation recited by Claims 1-13 and 27-33. Appellants further respectfully submit that Claims 1-13 and 27-33 patentably distinguish over *Gardner*. Thus, Appellants respectfully traverse the Final Office Action’s rejection of Claims 1-13 and 27-33 under 35 U.S.C. § 102(b) over *Gardner*.

a. Gardner Fails to Anticipate Claims 1-13 and 27, 28, and 30-32

For example, with respect to independent Claim 1, this claim recites:

A fulfillment system associated with a distributed supply chain, comprising:

a database operable to store:

at least one customer-specified rule identifying a sourcing constraint associated with a customer; and

at least one contract value associated with a current status of a contract involving the customer; and

one or more processors collectively operable to:

receive an available-to-promise (ATP) request comprising a plurality of request line-items each corresponding to a desired product;

generate one or more component ATP requests using at least one rule in the database and based on the request line-items;

communicate the component ATP requests to at least one supplier associated with the desired product, ***the supplier determined according to at least one customer-specified rule identifying the sourcing constraint***;

receive a plurality of component quotations from at least one supplier, each component quotation corresponding to a component ATP request and comprising product availability information for one or more corresponding desired products; and

generate a quotation for communication using the product availability information and the contract value in the database. (Emphasis Added).

Independent Claims 27-28 recite similar limitations. *Gardner* fails to disclose each and every limitation of independent Claims 1 and 27-28.

Appellants respectfully submit that *Gardner* fails to disclose, teach, or suggest independent Claim 1 limitation regarding “***database operable to store at least one customer-specified rule identifying a sourcing constraint*** associated with a customer and at least one ***contract value associated with a current status of a contract involving the customer.***” In particular, the Examiner states that “the system of *Gardner* ***indeed includes*** using at least one customer-specified rule identifying a sourcing constraint in determining which supplier to use”. (21 June 2006 Final Office Action, Page 7). (Emphasis Added). However, the Examiner fails to cite any specific portion of *Gardner*, including the column and line number, that allegedly “***indeed includes***” the limitations recited in independent Claim 1. In addition, the Examiner’s conclusory statement that “the system of *Gardner* ***indeed includes*** using at least one customer-specified rule identifying a sourcing constraint in determining which supplier to use”, is unaccompanied by any evidence or reasoning and is entirely inadequate to support the present rejection. Thus, Appellants respectfully submit that the equations forming the foundation of the Examiner’s comparison between *Gardner* and independent Claim 1 cannot be made. Appellants further respectfully submit that these distinctions alone are sufficient to patentably distinguish independent Claim 1 from *Gardner*.

Appellants can only assume that the Examiner is equating the requisition rules taught by *Gardner* to the sourcing constraint recited in independent Claim 1 of the present application. However, Appellants wish to point out that these are not equivalent. As stated in *Gardner*, requisition rules regard “the procedure to be followed in the procurement of goods and services.” (*Gardner*, col. 1, lines 13-14.). A procedure to be followed is not equivalent to a sourcing constraint. *Gardner* clearly fails to disclose, teach, or suggest a “**database operable to store at least one customer-specified rule identifying a sourcing constraint** associated with a customer and at least one **contract value associated with a current status of a contract involving the customer**”. Thus, *Gardner* fails to anticipate independent Claim 1 of the present invention, because, *inter alia*, *Gardner* fails to teach, suggest, or even hint at each and every element of independent Claim 1.

In addition, *Gardner* fails to disclose, teach, or suggest independent Claim 1 limitations regarding “at least one **contract value associated with a current status of a contract involving the customer**”. For example, the Examiner alleges that *Gardner* teaches this at column 5, lines 39 through 42. However, the passage of *Gardner* at column 5, lines 39 through 42, reproduced below for the Board’s convenience, merely discloses that the system taught by *Gardner* is able “to capitalize on previously negotiated contracts.”

The goal is to handle the majority of customer transactions via the catalog model, thereby capitalizing on previously negotiated contracts and eliminating non-value-added activities. (*Gardner*, column 5, lines 39 – 42).

However, capitalizing on **previous contracts** is not the same as a “**current status of a contract involving the customer**”. *Gardner* clearly fails to disclose, teach, or suggest a “**database operable to store at least one customer-specified rule identifying a sourcing constraint** associated with a customer and at least one **contract value associated with a current status of a contract involving the customer**”, as recited in independent Claim 1. Thus, *Gardner* fails to anticipate independent Claim 1 of the present invention, because, *inter alia*, *Gardner* fails to teach, suggest, or even hint at each and every element of independent Claim 1.

Appellants further respectfully submit that *Gardner* fails to disclose, teach, or suggest independent Claim 1 limitations regarding “**one or more processors**” collectively operable to “**receive an available-to-promise (ATP) request** comprising a plurality of request line-items each corresponding to a desired product and **generate one or more component ATP requests** using at least one rule in the database and based on the request line-items”. In fact, the Examiner fails to cite any specific portion of *Gardner*, including the column and line number, or even assert any argument that *Gardner* anticipates “**one or more processors**” collectively operable to “**receive an available-to-promise (ATP) request** comprising a plurality of request line-items each corresponding to a desired product and **generate one or more component ATP requests** using at least one rule in the database and based on the request line-items”, as recited in independent Claim 1. Thus, Appellants respectfully submit that the equations forming the foundation of the Examiner’s comparison between *Gardner* and independent Claim 1 cannot be made. Appellants further respectfully submit that these distinctions alone are sufficient to patentably distinguish independent Claim 1 from *Gardner*.

Appellants still further respectfully submit that *Gardner* fails to disclose, teach, or suggest independent Claim 1 limitations regarding “**one or more processors**” collectively operable to “communicate the component ATP requests to at least one supplier associated with the desired product, **the supplier determined according to at least one customer-specified rule identifying the sourcing constraint**”. For example, on page 7 of the 21 June 2006 Final Office Action, the Examiner alleges that *Gardner* discloses this, “since the customer’s use of the *Gardner* et al. system inherently limits/constrains the customer to purchasing only from the particular vendors/catalogues listed in the system (i.e. the vendors with whom the operator of the central system has an agreement/connection)”. Appellants respectfully disagree with the characterization of the term “constraint” and thereby ‘sourcing constraint’, as set forth by the Examiner. The Examiner’s characterization that not having access to every possible vendor on the internet is equivalent to Appellants term “sourcing constraint” is improper. Furthermore, even if it is proper to characterize *Gardner* as teaching a sourcing constraint, simply because *Gardner* does not provide access to every vendor

that exists, the constraint is still not a customer-specified rule identifying the sourcing constraint. Rather, as taught by *Gardner* and explained by the Examiner, the constraint would be one chosen or created by Host, central system, not the customer. Therefore, as taught by *Gardner* and explained by the Examiner, any supplier that is determined by *Gardner* is not a **“supplier determined according to at least one customer-specified rule identifying the sourcing constraint”**. *Gardner* clearly fails to disclose, teach, or suggest “communicat[ing] the component ATP requests to at least one supplier associated with the desired product, **the supplier determined according to at least one customer-specified rule identifying the sourcing constraint**”. Thus, *Gardner* fails to anticipate independent Claim 1 of the present invention, because, *inter alia*, *Gardner* fails to teach, suggest, or even hint at each and every element of independent Claim 1.

The Appellants yet further respectfully submit that *Gardner* fails to disclose, teach, or suggest independent Claim 1 limitations regarding **“one or more processors”** collectively operable to **“receive a plurality of component quotations from at least one supplier**, each component quotation corresponding to a component ATP request and **comprising product availability information for one or more corresponding desired products”**. In particular, the Examiner states that “the system of *Gardner* **indeed includes** receiving quotes that comprise availability information”. (21 June 2006 Final Office Action, Page 7). (Emphasis Added). However, the Examiner fails to cite any specific portion of *Gardner*, including the column and line number, that allegedly **“indeed includes”** the limitations recited in independent Claim 1. In addition, the Examiner’s conclusory statement that “the system of *Gardner* **indeed includes** receiving quotes that comprise availability information”, is unaccompanied by any evidence or reasoning and is entirely inadequate to support the present rejection. In fact, Appellants respectfully submit that the Examiner has mischaracterized Appellants invention and respectfully direct the Examiner’s attention to independent Claim 1 limitations that provide for **“receiv[ing] a plurality of component quotations from at least one supplier**, each component quotation corresponding to a component ATP request and **comprising product availability information for one or more corresponding desired products”**. Thus, the Appellants respectfully submit that the equations forming the foundation of the Examiner’s

comparison between *Gardner* and independent Claim 1 cannot be made. The Appellants further respectfully submit that these distinctions alone are sufficient to patentably distinguish independent Claim 1 from *Gardner*.

In addition, on page 7 of the 21 June 2006 Final Office Action, the Examiner further asserts that *Gardner* “includes receiving quotes that comprise availability information and generating a quote that includes the availability information, since it is the centralized system that determines which supplier(s) the system will send the purchase order(s), and one of the criteria/rules used by the centralized system is the availability information”. Appellants respectfully submit, that what the Examiner has stated, is not recited in independent Claim 1. Instead, independent Claim 1 recites “**receiv[ing] a plurality of component quotations from at least one supplier, each component quotation corresponding to a component ATP request and comprising product availability information for one or more corresponding desired products**”. Thus, the Examiner states the *Gardner* teaches that a **centralized system determines product availability and then sends out the purchase order to a supplier**. In contrast, independent Claim 1 recites communicating the ATP request to at least one supplier associated with the desired product and then receiving a plurality of components quotes that include availability information from at least one supplier. The two information flows are fundamentally different. *Gardner* clearly fails to disclose, teach, or suggest “**receiv[ing] a plurality of component quotations from at least one supplier, each component quotation corresponding to a component ATP request and comprising product availability information for one or more corresponding desired products,**” as recited in independent Claim 1. Thus, *Gardner* fails to anticipate independent Claim 1 of the present invention, because, *inter alia*, *Gardner* fails to teach, suggest, or even hint at each and every element of independent Claim 1.

Appellants further respectfully submit that *Gardner* fails to disclose, teach, or suggest independent Claim 1 limitations regarding “**one or more processors**” collectively operable to “**generate a quotation for communication using the product availability information and the contract value in the database**”. In particular, the Examiner states that “the system of *Gardner* **indeed includes** generating a quotation that includes the contract

value”. (21 June 2006 Final Office Action, Page 8). (Emphasis Added). However, the Examiner fails to cite any specific portion of *Gardner*, including the column and line number, that allegedly “**indeed includes**” the limitations recited in independent Claim 1. In addition, the Examiner’s conclusory statement that “the system of *Gardner* **indeed includes** generating a quotation that includes the contract value”, is unaccompanied by any evidence or reasoning and is entirely inadequate to support the present rejection. In fact, Appellants respectfully submit that the Examiner has mischaracterized the Appellants invention and respectfully direct the Examiner’s attention to independent Claim 1 limitations that provide for “**generat[ing] a quotation** for communication **using** the product availability information and the contract value in the database”. Appellants respectfully submit that the “**generat[ing] a quotation** for communication” recited in independent Claim 1 is generated using the “product availability information and the contract value in the database”. Thus, Appellants respectfully submit that the equations forming the foundation of the Examiner’s comparison between *Gardner* and independent Claim 1 cannot be made. Appellants further respectfully submit that these distinctions alone are sufficient to patentably distinguish independent Claim 1 from *Gardner*.

Furthermore, as pointed out above, the contract value is a value associated with a current status of a contract involving the customer. Since, as shown above, *Gardner* does not teach, suggest, or even hint at a contract value that is associated with a current status of a contract involving the customer, *Gardner* cannot teach “generat[ing] a quotation for communication using the product availability information and the **contract value** in the database”.

In addition, Appellants respectfully submit that *Gardner* actually teaches away from “generat[ing] a quotation for communication using the product availability information and the **contract value** in the database.” For example, Figure 2 of *Gardner* shows the process flow for the system detailed in *Gardner*. In *Gardner*, a requisition is generated; any necessary attachments are categorized and sent. Examples of attachments are internal attachments that may remind customer of budget limit or external attachments to vendor showing catalogue pages with items being order on the page. Then the authorization procedure is initiated. The authorization procedure is part of the requisition

rules. Once authorization signatures are obtained the purchase orders are formed and transmitted to the vendor. Nowhere in the process, of *Gardner*, does the vendor send a “quotation” to anyone. In fact, the only time the vendor communicates with the purchaser, in *Gardner*, is after the purchase order has been sent. Thus, a quotation for communication using the product availability information and the contract value in the database never occurs. In addition, as stated in *Gardner*, column 5, lines 23-29 and admitted to by the Examiner on page 8 of the 21 June 2006 Final Office Action, *Gardner* teaches pre-negotiated prices. Therefore, if the prices are pre-negotiated and the purchase order is already approved by the purchaser in *Gardner*, a vendor, would, therefore, not send a “quotation” to the purchaser.

Therefore, for at least the reasons set forth herein, Appellants respectfully submit the *Gardner* fails to anticipate independent Claim 1 because, *inter alia*, *Gardner* fails to teach, suggest, or even hint at each and every limitation of independent Claim 1. Thus, independent Claim 1 is patentably distinguishable over *Gardner*. Independent Claims 27-28 recite similar limitations to independent Claim 1. Thus, independent Claims 27 and 28 are considered patentably distinguishable over *Gardner* for at least the reasons discussed above in connection with independent Claim 1.

With respect to dependent Claims 2-13 and 30-32, which depend from independent Claims 1, 27, and 28, each of independent Claims 1, 27, and 28, are considered patentably distinguishable over *Gardner*. Thus, dependent Claims 2-13 and 30-32 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

b. *Gardner* Fails to Anticipate Claims 29 and 33

Independent Claim 29 recites limitations similar to those of independent Claims 1, 27, and 28 and is therefore patentably distinguishable over *Gardner* for at least the same reasons as those set forth in regards to independent Claims 1, 27, and 28. In addition, independent Claim 29 recites additional limitations, not recited in independent Claims 1, 27, and 28 which are also not disclosed, taught, or suggest by *Gardner*.

For example, with respect to independent Claim 29, this claim recites:

A fulfillment system associated with a distributed supply chain, comprising:

a database operable to store:

at least one customer-specified first rule identifying a sourcing constraint associated with a customer, ***at least one of the first rules identifying one or more preferred suppliers associated with the customer***; and

at least one second rule identifying a sourcing constraint associated with a supplier; and

one or more processors collectively operable to:

generate a contract value associated with a current status of a contract involving the customer;

receive an available-to-promise (ATP) request comprising a plurality of request line-items each corresponding to a desired product;

select one or more of the rules based on contents of the ATP request;

generate one or more component ATP requests using at least one of the selected customer-specified rules and based on the request line-items;

communicate the component ATP requests to at least one supplier associated with the desired product, the supplier determined according to at least one rule identifying one of the sourcing constraints;

receive a plurality of component quotations from at least one supplier, each component quotation corresponding to a component ATP request and comprising product availability information for one or more corresponding desired products;

generate a first sourcing plan using at least the product availability information and the contract value, the first sourcing plan identifying one or more suppliers and a quantity of the desired product reserved from each identified supplier;

determine if the first sourcing plan satisfies the corresponding rules in the database; and

iteratively generate at least one additional sourcing plan if the first sourcing plan fails to satisfy the corresponding rules in the database. (Emphasis Added)

Appellants respectfully submit that *Gardner* fails to disclose, teach, or suggest, independent Claim 29 limitations regarding ***“at least one of the first rules identifying one or more preferred suppliers associated with the customer”***, ***“at least one second rule identifying a sourcing constraint associated with a supplier”***, ***“select one or more of the rules based on contents of the ATP request”***, ***“generate a first sourcing plan using at least the product availability information and the contract value, the first sourcing plan identifying one or more suppliers and a quantity of the desired product reserved from each identified supplier”***, ***“determine if the first sourcing plan satisfies the corresponding rules in the database”***, and ***“iteratively generate at least one additional sourcing plan if the first sourcing plan fails to satisfy the corresponding rules in the database.”***

The Examiner states that *Gardner* teaches a rule identifying preferred suppliers; however, no specific citation is given to support this claim, nor can Appellant find any information supporting the Examiner’s assertion. In fact, *Gardner* only discloses the term “preferred” in combination with the term “embodiment” (i.e., preferred embodiment). In addition, *Gardner* merely discloses the term supplier by the terms different, both, various, individual or various. However, none of these terms is equivalent to “preferred” nor do they suggest the term or the meaning of “preferred”, as recited in Appellants claims. Therefore, *Gardner* fails to teach, suggest, or even hint at, ***“at least one of the first rules identifying one or more preferred suppliers associated with the customer”***. Thus, *Gardner* fails to anticipate independent Claim 29 of the present invention, because, *inter alia*, *Gardner* fails to teach, suggest, or even hint at each and every element of independent Claim 29.

Appellants further respectfully submit that *Gardner* fails to disclose, teach, or suggest, independent Claim 29 limitations regarding ***“at least one second rule identifying a sourcing constraint associated with a supplier”*** and ***“select one or more of the rules based on contents of the ATP request”***. In fact, the Examiner fails to point to any portion of *Gardner* as teaching Appellants above limitation. In addition, the Examiner and Final Office Action are silent in regards to this limitation. Therefore, *Gardner* fails to teach, suggest, or even hint at, ***“at least one second rule identifying a***

sourcing constraint associated with a supplier” and “select one or more of the rules based on contents of the ATP request”. Thus, *Gardner* fails to anticipate independent Claim 29 of the present invention, because, *inter alia*, *Gardner* fails to teach, suggest, or even hint at each and every element of independent Claim 29.

Appellants still further respectfully submit that *Gardner* fails to disclose, teach, or suggest, independent Claim 29 limitations regarding **“generat[ing] a first sourcing plan using at least the product availability information and the contract value, the first sourcing plan identifying one or more suppliers and a quantity of the desired product reserved from each identified supplier”, “determine[ing] if the first sourcing plan satisfies the corresponding rules in the database”, and “iteratively generate at least one additional sourcing plan if the first sourcing plan fails to satisfy the corresponding rules in the database”.** As discussed above, with respect to independent Claim 1, *Gardner* fails to teach, suggest, or even hint at “contract value” as recited in Appellants claims. Therefore, it follows that *Gardner* cannot teach, suggest, or even hint at a first sourcing plan based on a contract value. It also follows that since *Gardner* does not teach a first sourcing plan based on a contract value, *Gardner* cannot teach determining if the sourcing plan satisfies rules in a database; nor can *Gardner* teach generating an additional sourcing plan if the first sourcing plan fails to satisfy the rules. Therefore, *Gardner* fails to teach, suggest, or even hint at **“generat[ing] a first sourcing plan using at least the product availability information and the contract value, the first sourcing plan identifying one or more suppliers and a quantity of the desired product reserved from each identified supplier”, “determine[ing] if the first sourcing plan satisfies the corresponding rules in the database”, and “iteratively generate at least one additional sourcing plan if the first sourcing plan fails to satisfy the corresponding rules in the database.”**

In addition, *Gardner* fails to disclose, teach, or suggest, alternate sourcing plans. In fact, *Gardner* fails to even hint at anything remotely similar to generating an alternate sourcing plan. *Gardner* merely discusses procedures for generating a requisition, procuring the necessary internal approvals for the requisition, and then the requisition,

or sub-requisitions if the requisition was broken in to subparts is sent to the various vendors. However, nowhere does *Gardner* teach, suggest, or even hint at planning for an alternate sourcing plan. Thus, *Gardner* fails to anticipate independent Claim 29 of the present invention, because, *inter alia*, *Gardner* fails to teach, suggest, or even hint at each and every element of independent Claim 29.

Therefore, for at least the reasons set forth herein, Appellants respectfully submit the *Gardner* fails to anticipate independent Claim 29 because, *inter alia*, *Gardner* fails to teach, suggest, or even hint at each and every limitation of independent Claim 29. Thus, independent Claim 29 is patentably distinguishable over *Gardner*. Claim 33 depends from independent Claim 29. Appellants respectfully submit that Claim 33 is patentably distinguishable over *Gardner* for at least the reason of depending from an allowable claim.

c. The Office Action has Failed to Properly Establish a *Prima Facie* case of Anticipation over *Gardner*

Appellants respectfully submit that the allegation in the present Office Action that *Gardner* discloses all of the claimed features is respectfully traversed. Further, it is noted that the Office Action provides no concise explanation as to how *Gardner* is considered to anticipate all of the limitations in Claims 1-13 and 27-33. ***A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if each and every element of a claimed invention is identically shown in that single reference.*** MPEP § 2131. (Emphasis Added).

With respect to the subject application, the Examiner has not adequately supported the rejection under 35 U.S.C. § 102, because the Examiner has not shown how each and every element of the Appellants claimed invention is identically shown in *Gardner*. For example, the Examiner asserts that “the system of *Gardner* ***indeed includes*** using at least one customer-specified rule identifying a sourcing constraint in determining which supplier to use”. (21 June 2006 Final Office Action, Page 7). Appellants respectfully disagree and further respectfully request clarification as to how the Examiner arrives at this conclusion. In another example, the Examiner asserts that “the system of *Gardner* ***indeed includes*** receiving quotes that comprise availability information”. (21 June 2006 Final

Office Action, Page 7). Appellants respectfully disagree and further respectfully request clarification as to how the Examiner arrives at this conclusion. In still another example, the Examiner asserts that “the system of *Gardner* **indeed includes** generating a quotation that includes the contract value”. (21 June 2006 Final Office Action, Page 8). Appellants respectfully disagree and further respectfully request clarification as to how the Examiner arrives at this conclusion. In addition, Appellants respectfully submit that the Examiner has not set forth the relevant teachings of *Gardner* including any references to the relevant column and line numbers of *Gardner* or asserted any argument or remarks regarding how each and every element of Appellants claimed invention is identically shown in *Gardner*.

Appellants respectfully point out that "it is incumbent upon the examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." Ex parte Levy, 17 U.S.P.Q.2d (BNA) 1461, 1462 (Pat. & Tm. Off. Bd. Pat. App. & Int. 1990). The Appellants respectfully submit that ***the Office Action has failed to establish a prima facie case of anticipation in Claims 1-13 and 27-33 under 35 U.S.C. § 102 with respect to Gardner because Gardner fails to identically disclose each and every element of Appellants claimed invention, arranged as they are in Appellants claims.***

Thus, for at least the reasons set forth herein, Appellants respectfully submit that Claims 1-13 and 27-33 are not anticipated by *Gardner*. Appellants further respectfully submit that Claims 1-13 and 27-33 are in condition for allowance. Thus, Appellants respectfully request that the Board withdraws the rejection of Claims 1-13 and 27-33 under 35 U.S.C. § 102(b) and request allowance of Claims 1-13 and 27-33.

CONCLUSION:

Accordingly, for at least the reasons discussed above, Claims 1-13 and 27-33 cannot be anticipated by the *Gardner* reference. For at least these reasons, Appellant respectfully requests reversal of the Examiner's rejection of Claims 1-13 and 27-33 and request allowance of Claims 1-13 and 27-33.

Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.

Respectfully submitted,

18 April 2007
Date

/Steven J. Laureanti/signed
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CLAIMS APPENDIX
(37 C.F.R. § 41.37(c)(1)(viii))

1. **(Previously Presented)** A fulfillment system associated with a distributed supply chain, comprising:

a database operable to store:

at least one customer-specified rule identifying a sourcing constraint associated with a customer; and

at least one contract value associated with a current status of a contract involving the customer; and

one or more processors collectively operable to:

receive an available-to-promise (ATP) request comprising a plurality of request line-items each corresponding to a desired product;

generate one or more component ATP requests using at least one rule in the database and based on the request line-items;

communicate the component ATP requests to at least one supplier associated with the desired product, the supplier determined according to at least one customer-specified rule identifying the sourcing constraint;

receive a plurality of component quotations from at least one supplier, each component quotation corresponding to a component ATP request and comprising product availability information for one or more corresponding desired products; and

generate a quotation for communication using the product availability information and the contract value in the database.

2. **(Original)** The fulfillment system of claim 1, wherein the one or more processors are further collectively operable to:

update the current status of the contract using previous orders placed under the contract; and

generate an updated contract value using the updated current status of the contract.

3. **(Original)** The fulfillment system of claim 1, wherein the one or more processors are further collectively operable to:

receive one or more attribute values from the customer, the attribute values associated with one or more attributes of the desired product;

search a product catalog for one or more products having matching attribute values; and

retrieve product information associated with at least one matching product from the catalog.

4. **(Original)** The fulfillment system of claim 1, wherein:

at least one rule identifies one or more preferred suppliers associated with the customer; and

the one or more processors are collectively operable to:

communicate the component ATP requests to the preferred suppliers;

determine if the preferred suppliers are able to supply a requested quantity of the desired product based on the component quotations; and

communicate component ATP requests to additional suppliers if the preferred suppliers are unable to supply the requested quantity of the desired product.

5. **(Original)** The fulfillment system of claim 1, wherein:

the database is further operable to store at least one second rule associated with one of the suppliers;

at least one second rule identifies a validity period for component quotations supplied by the supplier; and

the one or more processors are collectively operable to generate the component ATP requests and the quotation using the rule associated with the customer and the second rule associated with the supplier.

6. **(Original)** The fulfillment system of claim 1, wherein:

the database is operable to store a plurality of rules; and

the one or more processors are further collectively operable to select one or more of the rules for generating the component ATP requests based on contents of the ATP request.

7. **(Original)** The fulfillment system of claim 1, wherein the one or more processors are further collectively operable to:

identify a plurality of available optional components associated with the desired product;

identify valid combinations of the optional components; and

display the valid combinations of the optional components to the customer.

8. **(Original)** The fulfillment system of claim 1, wherein the one or more processors are further collectively operable to generate a sourcing plan using the product availability information and at least one rule, the sourcing plan identifying one or more suppliers and a quantity of the desired product reserved from each identified supplier.

9. **(Original)** The fulfillment system of claim 8, wherein the one or more processors are further collectively operable to iteratively generate a sourcing plan when a previous sourcing plan fails to satisfy the corresponding rules in the database.

10. **(Original)** The fulfillment system of claim 1, wherein the contract value comprises a discount available to the customer from one or more of the suppliers.

11. **(Original)** The fulfillment system of claim 1, wherein:
the database is further operable to store at least one second rule associated with a logistics provider; and
the second rule identifies one or more delivery services provided by the logistics provider and available to the customer.

12. **(Original)** The fulfillment system of Claim 1, wherein:
the fulfillment system operates in an electronic marketplace;
the one or more processors are collectively operable to receive at least one ATP request through a web-based user interface using Hypertext Transfer Protocol (HTTP);
and
the one or more processors are collectively operable to communicate the quotation using electronic mail.

13. **(Original)** The fulfillment system of Claim 1, wherein the one or more processors are collectively operable to receive at least one ATP request using at least one of Hypertext Transfer Protocol (HTTP), Simple Network Management Protocol (SNMP), Extensible Markup Languages (XML), Electronic Data Interchange (EDT) Value Added Network (VAN), and electronic mail.

14. – 26. **(Cancelled)**

27. **(Previously Presented)** Software for fulfillment in a distributed supply chain environment, the software embodied in at least one computer-readable medium and when executed by one or more processors operable to:

receive an available-to-promise (ATP) request comprising a plurality of request line-items each corresponding to a desired product;

generate one or more component ATP requests using at least one customer-specified rule and based on the request line-items, at least one of the rules identifying a sourcing constraint associated with a customer;

communicate the component ATP requests to at least one supplier associated with the desired product, the supplier determined according to at least one customer-specified rule identifying the sourcing constraint;

receive a plurality of component quotations from at least one supplier, each component quotation corresponding to a component ATP request and comprising product availability information for one or more corresponding desired products; and

generate a quotation for communication using the product availability information and at least one contract value associated with a current status of a contract involving the customer.

28. **(Previously Presented)** A fulfillment system associated with a distributed supply chain, comprising:

means for storing at least one customer-specified rule identifying a sourcing constraint associated with a customer and at least one contract value associated with a current status of a contract involving the customer;

means for receiving an available-to-promise (ATP) request comprising a plurality of request line-items each corresponding to a desired product;

means for generating one or more component ATP requests using at least one rule and based on the request line-items;

means for communicating the component ATP requests to at least one supplier associated with the desired product, the supplier determined according to at least one customer-specified rule identifying the sourcing constraint;

means for receiving a plurality of component quotations from at least one supplier, each component quotation corresponding to a component ATP request and comprising product availability information for one or more corresponding desired products; and

means for generating a quotation for communication using the product availability information and the contract value.

29. **(Previously Presented)** A fulfillment system associated with a distributed supply chain, comprising:

a database operable to store:

at least one customer-specified first rule identifying a sourcing constraint associated with a customer, at least one of the first rules identifying one or more preferred suppliers associated with the customer; and

at least one second rule identifying a sourcing constraint associated with a supplier; and

one or more processors collectively operable to:

generate a contract value associated with a current status of a contract involving the customer;

receive an available-to-promise (ATP) request comprising a plurality of request line-items each corresponding to a desired product;

select one or more of the rules based on contents of the ATP request;

generate one or more component ATP requests using at least one of the selected customer-specified rules and based on the request line-items;

communicate the component ATP requests to at least one supplier associated with the desired product, the supplier determined according to at least one rule identifying one of the sourcing constraints;

receive a plurality of component quotations from at least one supplier, each component quotation corresponding to a component ATP request and comprising product availability information for one or more corresponding desired products;

generate a first sourcing plan using at least the product availability information and the contract value, the first sourcing plan identifying one or more suppliers and a quantity of the desired product reserved from each identified supplier;

determine if the first sourcing plan satisfies the corresponding rules in the database; and

iteratively generate at least one additional sourcing plan if the first sourcing plan fails to satisfy the corresponding rules in the database.

30. **(Previously Presented)** The fulfillment system of claim 1, wherein the product availability information includes information representative of an inventory level.

31. **(Previously Presented)** The fulfillment system of claim 27, wherein the product availability information includes information representative of an inventory level.

32. **(Previously Presented)** The fulfillment system of claim 28, wherein the product availability information includes information representative of an inventory level.

33. **(Previously Presented)** The fulfillment system of claim 29, wherein the product availability information includes information representative of an inventory level.

Evidence Appendix
(37 C.F.R. § 41.37(c)(1)(ix))

No evidence is being submitted under 37 C.F.R. §§ 1.130, 1.131, or 1.132.

Related Proceedings Appendix
(37 C.F.R. § 41.37(c)(1)(x))

There are no known appeals, interferences, or judicial proceedings that are related to or that will directly affect, be directly affected by, or have a bearing on the Board's decision regarding this Appeal. Accordingly, no decisions on related appeals are being submitted.